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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,755	12/30/2003	Dougan H. Clarke	1.221.02	2743
7590	08/10/2006		EXAMINER	
MALLOY & MALLOY, P.A. 2800 S.W. Third Avenue Historic Coral Way Miami, FL 33129				YIP, WINNIE S
		ART UNIT		PAPER NUMBER
		3636		

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/748,755	CLARKE, DOUGAN H.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Winnie Yip	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 22 May 2006.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-6 and 12 is/are pending in the application.
- 4a) Of the above claim(s) 7-11 is/are withdrawn from consideration.
- 5) Claim(s) 12 is/are allowed.
- 6) Claim(s) 1 and 4-6 is/are rejected.
- 7) Claim(s) 2 and 3 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 23 December 2003 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>9/1/05</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

This office action is in response to applicant's amendment filed on May 22, 2006.

### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because the designation of the reference characters "12", "32", and "20" are confusing since each of them designate more than one elements. It is unclear which parts of drawing are "a band" and "a channel", and "a ring". For example, the reference character "12" has been used to designate both "an upper portion" (see Figs 2 and 3A) and "a band ?" (see Fig. 3B); and the reference character "32" has been used to designate both "a lower ledge of a ring" and "a upper ledge of the lower portion of the hub" (see Fig. 3B); and the reference characters "30" (see Fig. 2) and "20" (see Fig. 4) have both been used to designate "a channel". Correction is required. No new matter should be entered.
2. The drawings are objected to under 37 CFR 1.84(h)(1) because of the exploded view, i.e. Fig. 2, with the separated parts within the same figure, should be embraced by a bracket or a lead line in order to show the relationship or order of assembly of various parts. If there is not interconnection between the separated parts, they should be designed separately. No new matter should be entered.
3. The drawings are objected to as failing to comply with 37 CFR 1.84(m) because the solid black shading are not permitted (see Fig. 3a-5B). The solid black shading causes the reference characters "20", "70", "80", "52a-52d" (See Fig. 3A-5B) being shown clearly.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the feature "said brackets secured to said band and hub member" (claim 6) must be shown or the feature canceled from the claim. According to the drawings, the brackets (40) only secured to the channel of the hub member but not to the bead. No new matter should be entered.

5. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Election/Restrictions***

6. Applicant's election with traverse of election of species in the reply filed on May 22, 2006 is acknowledged. The traversal is on the ground(s) that the species of Figs. 2 and 4 should

be included in specie of Group II, shown in Figs. 3A-3B. This is not found persuasive because the specie of Group I, as shown in Fig. 2, having a channel being a single piece with a flat and solid supper surface, but the specie of Group II, as shown in Figs. 3A-3B, requires a band disposed within the channel. Therefore they are patentability distinct. However, we agree that the embodiment shown in Fig. 4 would be grouped with Figs. 3A-3B in Group II.

The requirement is still deemed proper and is therefore made FINAL.

7. Claims 7-11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected specie of Groups I and III, there being no allowable generic or linking claim. Claim 7-11 recites “a ring” which is read on embodiment of Group III, shown in Figs. 5A-5B).

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claim 5 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Clarke (US patent No. 6,314,976).

Clarke shows and teaches an umbrella frame comprising a pole (12), ribs (70), strut members (80), a secondary hub member (14), a pin member (112), a hub assembly (see Fig. 3) comprising a central aperture (20) sized to receive the pole, an upper portion, a lower portion, and a waist portion (28) disposed between the upper and lower portions, the waist portion having

a diameter smaller than the upper and lower portions, a channel (48) formed between the upper and lower portions and having at least one ledge (46) extending about a periphery of the hub member, and a plurality of brackets (52) secured to the channel of the hub member by fasteners (54).

**10.** Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Zeigler (US patent No.5,444,956).

Zeigler shows and teaches a hub assembly (see fig. 8F-8I) comprising: a hub member having a central aperture (199) sized to capable receive a pole member (101), the hub member having an upper portion (149) and a lower portion (151), a channel (157) formed around the hub member, a band disposed in the channel, and a plurality of brackets (147 , 169) pivotally secured to the band and the hub member for pivotally receiving an end of the strut member (79).

#### ***Claim Rejections - 35 USC § 103***

**11.** The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**12.** Claims 1 and 4-6, as better understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. ( US Patent No. 5,911,493) in view of McKee (US Patent No. 5,069,410).

Walker shows and teaches an umbrella frame comprising a pole (12), a hub assembly mounted on the pole, the hub assembly including a hub member (14) having a central aperture sized to receive and mounted on the pole, the hub member (14) being capable of sliding between a bottom end and a top end of the pole, the hub member having an upper portion and a lower portion, and a waist portion disposed between and having a smaller diameter than the upper and lower portions, a plurality of brackets (18) secured to a periphery of the upper portion of the hub member to pivotally receive ends of strut members of the umbrella respectively. Although Walker does not define the hub assembly including a band secured about the periphery of the hub member and the brackets being secured on the band as claimed, McKee teaches a device comprising a band (100) secured on a periphery a tubular member (36) and a plurality of brackets being secured on the band such that the band providing a frictional surface to frictionally hold the brackets on the periphery surface of the tubular member for easily securing the brackets on the tubular member without directly contacting between the brackets and the tubular member. It would have been obvious to one ordinary skill in the art at the time the invention was made to modify the hub assembly of Walker et al. having a band secured on a periphery of a tubular shaped hub member and allow the brackets secured to the band and the hub member as taught by McKee to provide a frictional surface at a desirably position over a periphery of the tubular hub member and to frictionally securing the brackets on the hub member without directly contacting the brackets on the hub member.

***Allowable Subject Matter***

13. Claims 2-3 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. Claim 12 is allowed.

***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Davister '371 teaches a hub assembly having a plurality of brackets secured to a hub member as similar to the claimed invention. Gale teaches a sunshade frame having brackets mounted on hubs as similar to the claimed invention. Cohen '084 teaches a hub assembly comprising a hub having a channel and a band mounted thereon as similar to the claimed invention.

***Inquiry Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 571-272-6870. The examiner can normally be reached on M-F (9:30-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Winnie Yip  
Primary Examiner  
Art Unit 3636

wsy  
August 4, 2006